

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE SERVICES**  
**Before the Commissioner of Financial and Insurance Services**

In the matter of

XXXXX

Petitioner

File No. 87248-001

v

Priority Health

Respondent

/

Issued and entered  
this \_\_5th\_\_ day of March 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On January 17, 2008, XXXXX, on behalf of his minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted the Commissioner accepted the request on January 24, 2008.

The case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization (IRO) and requested the opinion of a medical expert. On February 7, 2008, the IRO completed its review and sent recommendations to the Office of Financial and Insurance Services.

**II**

**FACTUAL BACKGROUND**

The Petitioner's health care coverage is defined in Priority Health's point of service plan certificate of coverage (the certificate).

Born October 19, 1999, the Petitioner has infantile cerebral palsy characterized by hypotonia or deficient muscle tone. He was referred to physical therapy (PT) to improve his walking ability and from July 9 through July 20, 2007, he had PT at XXXXX Medical Center, a non-participating provider. A weighted suit was prescribed for the Petitioner to use during PT but Priority Health denied coverage for it.

The Petitioner appealed. After the Petitioner exhausted the internal grievance process, Priority Health maintained its denial and sent its final adverse determination letter dated December 14, 2007.

### **III ISSUE**

Was Priority Health's denial of coverage for a weighted suit for the Petitioner's physical therapy visits correct under the terms of the certificate?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner's father says that standard medical practice has shown that children like the Petitioner who have neuromuscular development issues with low muscle tone receive great benefit from using weighted suits. He believes, based on the fact that the Petitioner's physician and physical therapist determined it is not experimental, that Priority Health should cover the weighted suit because it is medically necessary.

#### **Priority Health's Argument**

Priority Health's coverage of durable medical equipment (DME) is limited to standard equipment. Priority Health's grievance committee said the certificate excludes nonstandard equipment: "The weighted physical therapy suit is considered nonstandard Durable Medical Equipment [and] therefore is excluded from coverage...." The committee gave its rationale: "There is no reliable evidence to suggest physical therapy with a weighted suit is more

efficacious than standard physical therapy.”

Priority Health’s decision is based on provisions in Section 7 of the certificate which describes the exclusions from the Petitioner’s coverage:

The following is a list of exclusions from your Coverage. \* \* \*

\* \* \*

- (12) Durable Medical Equipment. Equipment and devices are not Covered if they are:

\* \* \*

(f) non-standard,

\* \* \*

- (16) Experimental, Investigational or Unproven Services. Any drug, device, treatment or procedure that is experimental, investigational or unproven.

In addition, Priority Health’s medical policy entitled

“Experimental/Investigational/Unproven Care,” says in part:

**COVERAGE:**

Any drug, device, treatment or procedure that is experimental, investigational or unproven is not a covered benefit. A drug, device, treatment or procedure is experimental, investigational or unproven if *any* of the following apply:

\* \* \*

- (5) Reliable Evidence shows that the prevailing opinion among experts regarding the drug, device, treatment or procedure is that further studies or clinical trials are necessary to determine its toxicity, safety, or efficacy as compared with a standard means of treatment or diagnosis.

Priority Health believes it correctly denied coverage for the weighted suit as nonstandard, experimental, or unproven in accordance with the terms of the certificate.

Commissioner’s Review

In order to resolve the question of whether the weighted suit is nonstandard, investigational, experimental, or unproven DME for the Petitioner’s condition, the Commissioner obtained the recommendation of an independent review organization (IRO). The review was conducted by a practicing physician who is board certified in physical medicine and

rehabilitation and is published in the peer-reviewed literature. The IRO physician recommended upholding Priority Health's denial of coverage for the weighted suit.

The IRO physician explained that a weighted suit in conjunction with physical therapy is not considered standard treatment for cerebral palsy. The IRO physician found that, high-grade studies have yet to be published in peer-reviewed medical literature to confirm the clinical efficacy of the suit with respect to sustained, significant marginal gains above that which would naturally occur without the device and with conventional therapy interventions. The IRO reviewer also cited two recent studies which found there was no conclusive evidence to support efficacy of the suit.

Although there were some promising early reports about the use of weighted suits, the IRO physician concluded that a weighted suit in conjunction with physical therapy for the Petitioner's condition is not yet proven to be standard care: "Based on the extant medical literature and the standards of evidence-based practice of rehabilitation medicine, medical necessity for the suit therapy under review cannot be supported."

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. The IRO's analysis is based on extensive expertise and professional judgment and the Commissioner can find no reason why the IRO recommendation should be rejected. Therefore, the Commissioner accepts the conclusion of the IRO and finds that an weighted suit is investigational in this case and therefore not a covered benefit.

The Commissioner finds that Priority Health's denial is consistent with its certificate and medical policies.

## **V ORDER**

The Commissioner upholds Priority Health's December 14, 2007, final adverse determination in this case. Priority Health correctly coverage for a weight suit in conjunction

with physical therapy visits under the terms of its certificate and its schedule of benefits.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.